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3                   UNITED STATES DISTRICT COURT  
4                   DISTRICT OF NEVADA

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6 KEVIN JAMES LISLE,

Case No. 2:03-cv-1006-MMD-CWH

7                   Petitioner,

ORDER

8                   v.

9                   WILLIAM GITTERE, *et al.*,

10                  Respondents.

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13         In this capital *habeas corpus* action, on June 20, 2019, Petitioner Kevin James  
14 Lisle, who is represented by appointed counsel, filed a *pro se* motion to waive further  
15 proceedings and voluntarily dismiss this action. (ECF No. 359.) The Court held an  
16 evidentiary hearing regarding that motion on November 12 and 13, 2020. (ECF Nos. 444,  
17 445.) At the evidentiary hearing, Lisle's appointed counsel presented exhibits and  
18 testimony of witnesses, including Lisle himself, concerning the issues whether Lisle was  
19 competent to make the waiver and whether the waiver was knowing, intelligent and  
20 voluntary. Among the issues addressed at the evidentiary hearing was the question of the  
21 conditions of Lisle's confinement on Nevada's death row. At the conclusion of the  
22 evidentiary hearing, on the afternoon of November 13, 2020, before the Court ruled on  
23 Lisle's motion, Lisle withdrew the motion. (ECF Nos. 445 (minute order), 448 (transcript).)

24         When Lisle withdrew his motion, Lisle's counsel informed the Court that Lisle was  
25 concerned that he would be subjected to retaliation in prison as a result of proceedings  
26 in this habeas action. (ECF No. 448 at 152–67.) After discussion among counsel and the  
27 Court, the Court stated it would accept Lisle's withdrawal of his motion and would proceed  
28 to final adjudication of Lisle's habeas petition, and the Court stated further:

1           In the meantime, until that Petition is resolved, if you believe that as  
 2 a result of you deciding to continue to pursue this case, that you are being  
 3 subject to some adverse treatment or retaliation, you can bring those issues  
 4 to your attorney's attention. They will file a report with the Court. And I would  
 5 determine how to proceed. It may be that I would have a hearing by phone  
 6 with the attorneys to see what needs to be done.

7           And as I said, my hope is that the message will be clearly sent to  
 8 those involved in managing Ely State Prison that retaliation cannot occur  
 9 because Mr. Lisle should be able to proceed in this case and pursue his  
 10 rights, as he is entitled to do, without fear of retaliation.

11          (*Id.* at 165-66; ECF No. 445 (minute order) ("Until the petition is resolve[d], if Petitioner  
 12 believes that he is experiencing adverse conditions or retaliation as a result of this petition,  
 13 he must advise counsel in writing so that counsel can file a report to the Court. The Court  
 14 may hold a hearing if needed.").)

15          On April 2, 2021, Lisle's counsel filed a notice (ECF No. 454) stating that they had  
 16 received a declaration from Lisle in which he alleges adverse conditions and retaliation,  
 17 and Lisle's counsel filed Lisle's declaration (ECF No. 455-1).

18          In Lisle's declaration, which is dated March 20, 2021, he alleges that several  
 19 events have occurred, and that those events have amounted to retaliation against him;  
 20 those events include: a temporary assignment to isolation in an infirmary cell (ECF No.  
 21 455-1 at 2-3); limitations on access to telephone calls (*Id.* at 2-3, 8-10); loss of clothing  
 22 and other personal items (*Id.* at 3, 7); transportation on High Risk Potential ("HRP") status,  
 23 and other irregularities during transportation (*Id.* at 3, 5, 7); placement on "HRP Four Man  
 24 Escort" status (*Id.* at 3-4); limitations on food and canteen privileges (*Id.* at 3-5); limitations  
 25 on showers (*Id.* at 4); limitations on access to the yard (*Id.* at 4); and subjection to noise  
 26 (*Id.* at 7-8). The Court is concerned about all Lisle's allegations, but notes that the  
 27 following are especially troubling, as these allegations, if true, amount to threat of physical  
 28 harm or death<sup>1</sup>:

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1Lisle of course may seek relief under 42 U.S.C. § 1983 in a separate action if he  
 believes the conditions about which he complains violate his constitutional rights. This  
 Court's decision to review Lisle's complaint about the more serious allegations should not  
 affect Lisle's pursuit of any § 1983 claims.

1 Lisle alleges that around the time of the evidentiary hearing, perhaps  
2 after the first day of the evidentiary hearing on November 12, 2020, he was  
3 placed in a cell that "had been set up with the means to commit suicide,  
razor blades out of a razor sitting on the window [sill], lead already taken  
out of a pencil to start a fire, and a full bottle of [poisonous] liquid cleaner."  
*(Id.* at 6.)

4 Lisle alleges that from about December 29, 2020, to about January  
5 8, 2021, he was extremely ill, perhaps with COVID-19, but was apparently  
left in his cell to suffer through that illness without treatment. (*Id.* at 8-9.)

6 Lisle alleges events suggesting that in February 2021 he was set up  
7 for it to appear to certain inmates, allegedly gang members, that he had  
snitched on them about having contraband, perhaps telephones, leading to  
8 searches of their cells, and leading to Lisle being seen by them as a snitch.  
*(Id.* at 10-11.)

9 The Court will schedule a hearing, to hear the parties' positions regarding how  
10 these allegations should be handled. The Court will grant Respondents an opportunity to  
11 respond to Lisle's April 2, 2021, filings, and for Lisle to reply, before the hearing.

12 It is therefore ordered that Respondents will have 14 days from the date of entry  
13 of this Order to file a response to Lisle's April 2, 2021 filings (ECF Nos. 454, 455, 455-1).  
14 Lisle will then have 7 days to file a reply. The Court will issue a separate minute order to  
15 schedule a virtual hearing.

16 DATED THIS 12<sup>th</sup> Day of April 2021.

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20 MIRANDA M. DU  
21 CHIEF UNITED STATES DISTRICT JUDGE  
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